



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2015-0499; FRL-9954-82-OW]

Final National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges from the Application of Pesticides; Reissuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit issuance.

SUMMARY: This notice announces issuance by all ten Environmental Protection Agency (EPA) Regions of the final 2016 National Pollutant Discharge Elimination System (NPDES) pesticide general permit (PGP) – the “2016 PGP.” The 2016 PGP, which has an effective date of October 31, 2016, replaces the existing permit (“2011 PGP”) that expires at midnight on October 31, 2016, and authorizes certain point source discharges from the application of pesticides to waters of the United States in accordance with the terms and conditions described therein. EPA is issuing this permit for five (5) years in all areas of the country where EPA is the NPDES permitting authority.

DATES: The permit is effective on October 31, 2016, and will expire at midnight, October 31, 2021. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on [INSERT 14 days after date of publication in the FR]. Under Section 509(b) of the Clean Water Act, judicial review of this general permit can be requested by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued. Under Section 509(b) of the Clean Water Act, the requirements of this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In

addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of a Notices of Intent to be covered, if required, are provided in Part 1.2.3, Table 1-2, of the 2016 PGP.

FOR FURTHER INFORMATION CONTACT: EPA Regional Office listed in Section I.C., or you can send an email to pgp@epa.gov. You may also contact Prasad Chumble, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202-564-0021 or e-mail: chumble.prasad@epa.gov.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

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I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you apply pesticides, under the use patterns in Section III.B, that result in a discharge to waters of the United States in one of the geographic areas identified in Section III.A. Potentially affected entities, as categorized in the North American Industry Classification System (NAICS), may include, but are not limited to:

Table 1. - Entities Potentially Regulated by the 2016 PGP

Category	NAICS	Examples of Potentially Affected Entities
Agriculture parties— General agricultural interests, farmers/producers, forestry, and irrigation.	111 Crop Production	Producers of crops mainly for food and fiber, including farms, orchards, groves, greenhouses, and nurseries that have irrigation ditches requiring pest control.
	113110 Timber Tract Operations	The operation of timber tracts for the purpose of selling standing timber.
	113210 Forest Nurseries Gathering of Forest Products	Growing trees for reforestation and/or gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.
	221310 Water Supply for Irrigation	Operating irrigation systems.
Pesticide parties (includes pesticide manufacturers, other pesticide users/interests, and consultants).	325320 Pesticide and Other Agricultural Chemical Manufacturing.	Formulation and preparation of agricultural pest control chemicals.
Public health parties (includes mosquito or other vector control districts and commercial applicators that service these).	923120 Administration of Public Health Programs	Government establishments primarily engaged in the planning, administration, and coordination of public health programs and services, including environmental health activities.
Resource management parties (includes State departments of fish and wildlife, State departments of pesticide regulation, State environmental agencies, and universities).	924110 Administration of Air and Water Resource and Solid Waste Management Programs	Government establishments primarily engaged in the administration, regulation, and enforcement of air and water resource programs; the administration and regulation of water and air pollution control and prevention programs; the administration and regulation of flood control programs; the administration and regulation of drainage development and water resource consumption programs; and coordination of these activities at intergovernmental levels.

	924120 Administration of Conservation Programs	Government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry.
Utility parties (includes utilities)	221 Utilities	Provide electric power, natural gas, steam supply, water supply, and sewage removal through a permanent infrastructure of lines, mains, and pipes.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-2015-0499. The official public docket is the collection of materials that are available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) WJC West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the Water Docket is (202) 566-1744.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the United States government on-line source for federal regulations at <http://www.regulations.gov>.

An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/dockets>. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials at the EPA Docket Center.

Electronic versions of the 2016 PGP and Fact Sheet are also available on the EPA's NPDES website at <https://www.epa.gov/npdes/pesticide-permitting>.

C. Who Are the EPA Regional Contacts for this final permit?

For EPA Region 1, contact George Papadopoulos at tel.: (617) 918-1579; or e-mail at papadopoulos.george@epa.gov.

For EPA Region 2, contact Maureen Krudner at tel.: (212) 637-3874; or e-mail at krudner.maureen@epa.gov.

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For EPA Region 6, contact Kilty Baskin at tel.: (214) 665-7500 or e-mail at baskin.kilty@epa.gov.

For EPA Region 7, contact Kimberly Hill at tel.: (913) 551-7841 or e-mail at: hill.kimberly@epa.gov.

For EPA Region 8, contact David Rise at tel.: (406) 457-5012 or e-mail at: rise.david@epa.gov.

For EPA Region 9, contact Pascal Mues at tel.: (415) 972-3768 or e-mail at: mues.pascal@epa.gov.

For EPA Region 10, contact Dirk Helder at tel.: (208) 378-5749 or e-mail at: helder.dirk@epa.gov.

II. Background

Section 301(a) of the Clean Water Act (CWA) provides that “the discharge of any pollutant by any person shall be unlawful” unless the discharge is in compliance with certain other Sections of the Act. 33 U.S.C. 1311(a). The CWA defines “discharge of a pollutant” as “(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” 33 U.S.C. 1362(12). A “point source” is any “discernible, confined and discrete conveyance” but does not include “agricultural stormwater discharges and return flows from irrigated agriculture.” 33 U.S.C. 1362(14).

The term “pollutant” includes, among other things, “garbage... chemical wastes, biological materials ...and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. 1362(6).

A person may discharge a pollutant without violating the Section 301 prohibition by obtaining authorization to discharge (referred to herein as “coverage”) under a Section 402 NPDES permit (33 U.S.C. 1342). Under Section 402(a), EPA may “issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding Section 1311(a)” upon certain conditions required by the Act.

EPA issued the first Pesticide General Permit (“2011 PGP”) on October 31, 2011, in response to the United States Sixth Circuit Court of Appeals ruling vacating EPA’s 2006 Final Rule on Aquatic Pesticides. *National Cotton Council of America. v. EPA*, 553 F.3d 927 (6th Cir. 2009). EPA is issuing the 2016 PGP to replace the 2011 PGP which expires at midnight on October 31, 2016. Similar to the 2011 PGP, the 2016 PGP provides coverage for certain point source discharges from the application of pesticides to waters of the United States in areas where EPA is the NPDES permitting authority.

EPA published the draft 2016 PGP and accompanying Fact Sheet in the Federal Register on January 26, 2016 (81 FR 4289), soliciting comments on the draft permit. EPA also conducted formal consultation with Indian Tribal Governments. EPA received 28 written comment letters on the draft permit. EPA considered all comments received during the comment period in preparing the final permit. EPA responded to all significant comments in the Response to Comment Document which is available as part of the docket for this permit.

III. Scope and Applicability

A. Geographic Coverage

EPA provides permit coverage for classes of point source discharges that occur in areas where EPA is the NPDES permitting authority. The geographic coverage of the 2016 PGP is listed in Appendix C of the permit and also listed below. This permit also applies in all areas of Indian Country that are not covered by an EPA-approved permitting program, for example, the areas of Indian Country described below:

EPA Region 1

- Massachusetts, including Indian Country within Massachusetts
- Indian Country within Connecticut
- New Hampshire
- Indian Country within Rhode Island
- Federal Facilities within Vermont

EPA Region 2

- Indian Country within New York State
- Puerto Rico

EPA Region 3

- The District of Columbia
- Federal Facilities within Delaware

EPA Region 4

- Indian Country within Alabama
- Indian Country within Florida
- Indian Country within Mississippi
- Indian Country within North Carolina

EPA Region 5

- Indian Country within Michigan
- Indian Country within Minnesota, excluding Fond du Lac Band of Chippewa
- Indian Country within Wisconsin, excluding Lac du Flambeau Band of Lake Superior Chippewa Indians

EPA Region 6

- Indian Country within Louisiana
- New Mexico, including Indian Country within New Mexico, except Navajo Reservation Lands (see Region 9) and Ute Mountain Reservation Lands (see Region 8)
- Indian Country within Oklahoma
- Discharges in Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly TNRCC), including activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline, including Indian Country.

EPA Region 7

- Indian Country within Iowa
- Indian Country within Kansas
- Indian Country within Nebraska, except Pine Ridge Reservation lands (see Region 8)

EPA Region 8

- Federal Facilities in Colorado, including those on Indian Country within Colorado as well as the portion of the Ute Mountain Reservation located in New Mexico
- Indian Country within Montana
- Indian Country within North Dakota

- Indian Country within South Dakota, as well as the portion of the Pine Ridge Reservation located in Nebraska (see Region 7)
- Indian Country within Utah, except Goshute and Navajo Reservation lands (see Region 9)
- Indian Country within Wyoming

EPA Region 9

- The Island of American Samoa
- Indian Country within Arizona as well as Navajo Reservation lands in New Mexico (see Region 6) and Utah (see Region 8), excluding Hualapai Tribe
- Indian Country within California, excluding Hoopa Valley Tribe
- The Island of Guam
- The Johnston Atoll
- Midway Island, Wake Island, and other unincorporated U.S. possessions
- The Commonwealth of the Northern Mariana Islands
- Indian Country within the State of Nevada, as well as the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon (see Region 10) and the Goshute Reservation in Utah (see Region 8)

EPA Region 10

- Indian Country and the Denali National Park and Preserve within Alaska
- Idaho, including Indian Country within Idaho, except Duck Valley Reservation lands (see Region 9)
- Indian Country within Oregon, except Fort McDermitt Reservation lands (see Region 9)

- Federal Facilities in Washington, including those located on Indian Country within Washington

B. Categories of Pesticide Use-Patterns Covered

This permit regulates discharges to waters of the United States from the application of (1) biological pesticides, and (2) chemical pesticides that leave a residue. These apply to the following pesticide use patterns:

- **Mosquito and Other Flying Insect Pest Control** - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.
- **Weed and Algae Pest Control** - to control weeds, algae, and pathogens that are pests in water and at water's edge, including ditches and/or canals.
- **Animal Pest Control** - to control animal pests in water and at water's edge. Animal pests in this use category include fish, lampreys, insects, mollusks, and pathogens.
- **Forest Canopy Pest Control** – application of a pesticide to a forest canopy to control the population of a pest species (*e.g.*, insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.

The scope of activities encompassed by these pesticide use patterns is described in greater detail in Part III.1.1 of the Fact Sheet for the 2016 PGP.

C. Summary of Updates to the 2011 PGP and from the Proposed 2016 PGP.

The 2016 PGP replaces the 2011 PGP, which was issued for a five-year term on October 31, 2011 (76 FR 68750) and expires October 31, 2016, at midnight. While the requirements of the

2016 PGP remain the same as those in the 2011 PGP, some minor updates have been added and are discussed in more detail in the 2016 PGP Fact Sheet, such as:

- Added electronic reporting requirements in Part 7.8 of the PGP to be consistent with EPA's Electronic Reporting Rule (78 FR 46005); and
- Updated the definition of National Marine Fisheries Service (NMFS) Listed Resources of Concern to include additional species as a result of consultation between EPA and NMFS, as required under Section 7 of the Endangered Species Act.

EPA published the draft 2016 PGP for public comment on January 26, 2016 (81 FR 4289). The following is a summary of permit modifications from the draft 2016 PGP:

- Changed the date when Notices Of Intent (NOIs) are required from October 31, 2016, to January 12, 2017, in order to allow Decision-makers enough time to read and understand the permit requirements and comply with the reporting and recordkeeping requirements of the permit; and
- Updated Part 9.0 of the 2016 PGP to reflect state and tribal CWA Section 401 certifications.

D. Summary of 2016 PGP Terms and Requirements

The 2016 PGP is similar to the 2011 PGP, and is structured in the same nine parts: (1) coverage under the permit, (2) technology-based effluent limitations, (3) water quality-based effluent limitations, (4) monitoring, (5) pesticide discharge management plan, (6) corrective action, (7) recordkeeping and Annual Reporting, (8) EPA contact information and mailing addresses, and (9) permit conditions applicable to specific states, Indian Country, or territories. Additionally, as with the 2011 PGP, the 2016 PGP includes nine appendices with additional conditions and guidance for permittees: (A) definitions, abbreviations, and acronyms, (B)

standard permit conditions, (C) areas covered, (D) NOI form, (E) Notice of Termination (NOT) form, (F) Pesticide Discharge Evaluation worksheet (PDEW), (G) Annual Reporting template, (H) Adverse Incident template, and (I) endangered species procedures.

The following is a summary of the 2016 PGP's requirements:

- The PGP defines “Operator” (*i.e.*, the entity required to obtain NPDES permit coverage for discharges) to include any (a) *Applicator* who performs the application of pesticides or has day-to-day control of the application of pesticides that results in a discharge to waters of the United States, or (b) *Decision-maker* who controls any decision to apply pesticides that results in a discharge to waters of the United States. There may be instances when a single entity acts as both an Applicator and a Decision-maker.
- All Applicators are required to minimize pesticide discharges by using only the amount of pesticide and frequency of pesticide application necessary to control the target pest, maintain pesticide application equipment in proper operating condition, control discharges as necessary to meet applicable water quality standards, and monitor for and report any adverse incidents.
- All Decision-makers are required, to the extent not determined by the Applicator, to minimize pesticide discharges by using only the amount of pesticide and frequency of pesticide application necessary to control the target pest. All Decision-makers are also required to control discharges as necessary to meet applicable water quality standards and monitor for and report any adverse incidents.
- Coverage under this permit is available only for discharges and discharge-related activities that are not likely to adversely affect species that are federally-listed as

endangered or threatened (“listed”) under the Endangered Species Act (ESA) or habitat that is federally-designated as critical under the ESA (“critical habitat”), except for certain cases specified in the permit involving prior consultation with the NMFS, and for Declared Pest Emergency Situations. The permit contains several provisions addressing listed species, including for certain listed species identified in the permit as NMFS Listed Resources of Concern, that Decision-makers whose discharges may affect these resources certify compliance with one of six criteria which together ensure that any potential adverse effects have been properly considered and addressed. These NMFS Listed Resources of Concern for the PGP are identified in detail on EPA’s website at <https://www.epa.gov/npdes/pesticide-permitting-ESA-procedures>. Other requirements that address protection of listed species include the waiting periods between submission of an NOI and authorization to discharge, and specific permit conditions requiring compliance with the results of any ESA Section 7 consultation with the Services, or ESA Section 10 permit issued by the Services.

- Certain Decision-makers [*i.e.*, any agency for which pest management for land resource stewardship is an integral part of the organization’s operations, entities with a specific responsibility to control pests (*e.g.*, mosquito and weed control districts), local governments or other entities that apply pesticides in excess of specified annual treatment area thresholds, and entities that discharge pesticides to Tier 3 waters or to waters of the United States containing NMFS Listed Resources of Concern] are required to also submit an NOI to obtain authorization to discharge and implement pest management options to reduce the discharge of pesticides to waters of the United States. Of this group, certain large Decision-makers must also develop a Pesticide Discharge Management Plan

(PDMP), submit annual reports, and maintain detailed records. Certain small Decision-makers are required to complete a pesticide discharge evaluation worksheet for each pesticide application (in lieu of the more comprehensive PDMP), an annual report, and detailed recordkeeping.

- Permit conditions take effect as of October 31, 2016; however, Operators with eligible discharges are authorized for permit coverage (or automatically covered) through January 12, 2017 without submission of an NOI. Thus, for any discharges commencing on or before January 12, 2017 that will continue after this date, an NOI must be submitted no later than January 2, 2017 to ensure uninterrupted permit coverage, and for any discharge occurring after January 12, 2017, no later than 10 days before the first discharge occurring after January 12, 2017.

IV. Cost Impacts of the PGP

EPA expects the costs that covered entities, including small businesses, will bear to comply with this permit to be minimal. A copy of the EPA's cost impact analysis, titled, "*Cost Impact Analysis for the EPA's Final 2016 Pesticide General Permit (PGP)*" is available in the docket for this permit.

V. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

In compliance with Executive Order 13175, EPA consulted with tribal officials to gain an understanding of, and where necessary, to address tribal implications of the 2016 PGP. In the course of this consultation, EPA undertook the following activities:

- October 28, 2015—EPA mailed notification letters to tribal leaders initiating consultation and coordination on the renewal of the PGP. The initiation letter was posted on the tribal portal website at <https://www.epa.gov/tribal>.
- November 19, 2015—EPA held an informational teleconference open to all tribal representatives, and reserved the last part of the teleconference for official consultation comments. Seven tribal officials participated. EPA also invited tribes to submit written comments on the draft 2016 PGP. The presentation was posted on the tribal portal website at <http://tcots.epa.gov>.

EPA did not receive any comments during the formal tribal consultation period. EPA notes that as part of the finalization of this permit, the Agency completed Section 401 certification procedures with all applicable tribes where this permit will apply (see Part 9 and Appendix C of the PGP).

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: October 24, 2016

H. Curtis Spalding,

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Dated: October 24, 2016.

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Dated: October 24, 2016.

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Dated: October 24, 2016.

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Dated: October 24, 2016.

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Dated: October 24, 2016.

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